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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 CHIQUITA C.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C19-1518-BAT

**ORDER AFFIRMING THE
COMMISSIONER'S FINAL DECISION
AND DISMISSING THE CASE WITH
PREJUDICE**

13 Plaintiff seeks review of the denial of her application for Supplemental Security Income.
14 She contends the ALJ erred by discounting her testimony and two medical opinions. Dkt. 8. As
15 discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the
16 case with prejudice.

17 **BACKGROUND**

18 Plaintiff is 40 years old, has a high school education and has no past relevant work. Tr.
19 39-40. She applied for benefits on April 25, 2016, alleging disability as of March 8, 2012. Tr.
20 30. After conducting a hearing in April 2018, the ALJ issued a decision in August 2018, finding
21 Plaintiff not disabled. Tr. 47-87, 30-41. Using the five-step disability evaluation process
22 outlined in 20 C.F.R. § 416.920, the ALJ found Plaintiff had severe impairments of degenerative
23 joint disease of bilateral feet, diabetes, obesity, depression, anxiety disorder, post-traumatic stress

1 disorder, and bipolar affective disorder. Tr. 32. The ALJ found Plaintiff could perform simple
2 routine tasks and light work, standing or walking six hours and sitting six hours per day, with
3 additional postural, manipulative, and environmental limitations. Tr. 35-36.

4 **DISCUSSION**

5 The Court may set aside the Commissioner's denial of Social Security benefits only if the
6 ALJ's decision is based on legal error or not supported by substantial evidence in the record as a
7 whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

8 **A. The ALJ Did Not Err by Discounting the Opinions of Margaret Adams, ARNP**

9 During a July 2017 appointment to establish care, Ms. Adams filled out a Physical
10 Functional Evaluation form. Tr. 687-88, 669-73. Ms. Adams opined Plaintiff's bilateral
11 clubfoot moderately limited her sitting and markedly limited her standing and walking, and
12 opined Plaintiff could not perform even sedentary work. Tr. 670-71. An ALJ may reject the
13 opinion of an other- medical source, such as a nurse practitioner in this case, by giving reasons
14 germane to the opinion. *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014). The ALJ gave
15 Ms. Adams' opinions "little weight" as inconsistent with Plaintiff's activities and a prior
16 provider's advice, and for lack of supporting explanation. Tr. 38.

17 According to a February 2018 treatment note, Plaintiff took a truck to pick up enough
18 furniture to "partially furnish her new place" and "was by herself so she had to haul everything."
19 Tr. 733-34. Carrying furniture contradicted Ms. Adams' opinions of marked standing and
20 walking limitations and inability to perform even sedentary work. Plaintiff argues, because the
21 treatment note also states she "was hurting really bad" after hauling furniture, this activity does
22 not contradict Ms. Adams' opinions. Tr. 734; Dkt. 8 at 6. However, Plaintiff's ability to
23 perform activity far more demanding than sedentary work, even though it caused pain in

1 succeeding days, undermines the opinion she is limited to less than sedentary work on an
2 ongoing basis.

3 Conflict with Plaintiff's activities was a germane reason to discount Ms. Adams'
4 opinions. The Court need not address the ALJ's remaining reasons because, even if erroneous,
5 inclusion of erroneous reasons was harmless error. *See Molina v. Astrue*, 674 F.3d 1104, 1117
6 (9th Cir. 2012) (error harmless if "inconsequential to the ultimate disability determination").

7 **B. The ALJ Did Not Err by Discounting the Opinions of M. E. Mitchell, Psy.D.**

8 In September 2017 Dr. Mitchell examined Plaintiff and filled out a Psychological/
9 Psychiatric Evaluation form. Tr. 674-78. Dr. Mitchell diagnosed recurrent unspecified major
10 depressive disorder, generalized anxiety disorder, and chronic severe PTSD. Tr. 676. Dr.
11 Mitchell opined Plaintiff was severely limited, *i.e.*, unable to perform, maintaining punctual
12 attendance, maintaining appropriate behavior, completing a normal workday and workweek, and
13 setting goals and planning independently. Tr. 676-77. Dr. Mitchell also opined marked
14 limitations in performing detailed tasks, adapting to changes in routine, and communicating and
15 performing effectively. Tr. 676. All other work-related abilities were moderately limited. *Id.*
16 An ALJ may reject an examining doctor's contradicted opinion by stating "specific and
17 legitimate" reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). The ALJ gave Dr.
18 Mitchell's opinions "little weight" as inconsistent with the medical record and Plaintiff's
19 testimony and activities. Tr. 38.

20 The ALJ reasonably found Plaintiff's activities contradicted Dr. Mitchell's opinions of
21 extreme limitation in most work-related activities. For example, Plaintiff's ability to move from
22 Florida to Seattle in June 2017 contradicted the opined inability to set goals and plan
23 independently and the opined marked limitation in adapting to changes. Tr. 63, 54. Plaintiff's

1 testimony she is a “people person” and “like[s] to interact with people” undermined the opined
2 marked limitation in communicating effectively and the opined inability to maintain appropriate
3 behavior. Tr. 82. Plaintiff argues she is bad with people some days. Dkt. 10 at 6 (citing Tr. 74).
4 But there is no evidence this happens frequently, and Plaintiff testified she would rather work
5 with people than work with no public contact. Tr. 82. The ALJ’s interpretation was reasonable
6 and the Court accordingly declines to disturb it. *See Burch v. Barnhart*, 400 F.3d 676, 680-81
7 (9th Cir. 2005). Conflict with Plaintiff’s activities was a specific and legitimate reason to
8 discount Dr. Mitchell’s opinions. *See Ghanim*, 763 F.3d at 1162. The Court thus need not
9 address the ALJ’s other reasons because inclusion of any erroneous reasons is harmless.

10 **C. Plaintiff’s Testimony**

11 The ALJ could only discount Plaintiff’s testimony as to symptom severity by providing
12 “specific, clear, and convincing” reasons supported by substantial evidence. *Trevizo*, 871 F.3d at
13 678. Plaintiff testified she could not engage in “prolonged sitting,” but also testified she could sit
14 for two to three hours at a time, consistent with the RFC. Tr. 62-63, 67; Tr. 35. The ALJ’s
15 acceptance of Plaintiff’s testimony is not unreasonable.

16 Plaintiff testified she could not walk six hours on a daily basis; if she walked six hours
17 one day, it would take two days before she could walk again. Tr. 66. There is no dispute
18 Plaintiff has congenital bilateral clubfoot, right more severe than left. In the July 2017
19 appointment to establish care with Ms. Adams, Plaintiff reported the pain from her clubfoot,
20 “focused in right ankle, below knee,” had worsened as she had gotten older. Tr. 688. The ALJ
21 discounted Plaintiff’s testimony of standing and walking limitations because she did not seek
22 regular treatment for worsening pain caused by her clubfoot, which she described to Ms. Adams
23 in July 2017 as her “main concern.” Tr. 688. Plaintiff contends the ALJ erred by failing to

1 account for the fact she had been living with clubfoot her whole life, and asserts without citation
2 to the record or other authority that there was “not much more a specialist could do.” Dkt. 8 at
3 11. But Plaintiff complained of worsening pain with age, and the ALJ reasonably inferred
4 Plaintiff would have sought treatment for her pain if it had been truly debilitating. Plaintiff also
5 argues the ALJ failed to account for the fact Plaintiff had just moved to Seattle, and there was
6 “no reason to submit any evidence prior to” the application date. Dkt. 8 at 12. That does not,
7 however, explain the lack of treatment for over a year from the April 2016 application date until
8 the June 2017 move to Seattle. Lack of treatment was a clear and convincing reason to discount
9 Plaintiff’s testimony. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (holding that “an
10 unexplained, or inadequately explained, failure to seek treatment” can constitute a sufficient
11 reason for discrediting a claimant’s symptom testimony). The ALJ also discounted Plaintiff’s
12 standing and walking testimony based on normal gait and no swelling until July 2017. Tr. 37.
13 This objective medical evidence, though insufficient standing alone, further supports the ALJ’s
14 determination. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (“While subjective
15 pain testimony cannot be rejected on the sole ground that it is not fully corroborated by objective
16 medical evidence, the medical evidence is still a relevant factor in determining the severity of the
17 claimant’s pain and its disabling effects.”). The ALJ did not err by discounting Plaintiff’s
18 testimony on standing and walking limitations.

19 Plaintiff testified anxiety and depression cause good days and bad days. Tr. 73. On bad
20 days she is “real bad with people.” Tr. 74. Plaintiff did not testify what work-related
21 impairments this might cause, or how often. Plaintiff testified she sometimes sleeps poorly,
22 which results in poor concentration the next day. Tr. 73-74. Any error in discounting Plaintiff’s
23 mental impairment testimony is harmless. Plaintiff, in her briefing, “alleg[es] that her pain,

1 depression/bipolar disorder, anxiety, and PTSD prevent her from maintaining sufficient
2 concentration, persistence, and pace to perform full-time work.” Dkt. 8 at 13. But her testimony
3 does not support this allegation. Plaintiff testified that getting a poor night’s sleep “[d]efinitely”
4 affects her ability to concentrate, but did not testify to what degree her concentration is affected
5 or that it happens with any frequency. Tr. 74. The ALJ accommodated concentration and focus
6 deficits by restricting Plaintiff to “simple routine tasks, in a routine work environment with
7 simple work related decisions.” Tr. 36. Plaintiff has not shown that her testimony, even if
8 accepted, required any greater restrictions. The ALJ did not harmfully err in addressing
9 Plaintiff’s testimony.

10 **CONCLUSION**

11 For the foregoing reasons, the Commissioner’s decision is **AFFIRMED** and this case is
12 **DISMISSED** with prejudice.

13 DATED this 8th day of April, 2020.

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BRIAN A. TSUCHIDA
Chief United States Magistrate Judge